UNIT 10: JUDICIAL REVIEW AND JUDICIAL ACTIVISM

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10.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- know the judicial system in India
- understand the process of judicial review and
- understand the new developments, such as, public interest litigation and judicial activism.

10.2 INTRODUCTION

India has established an integrated judicial system. At the top of this system stands the Supreme Court, then comes the High Courts and after that other Lower Courts. One important feature of the Indian judicial system is the provision of judicial review which enables the courts to examine the constitutionality of the laws made by the legislature and the executive actions. In the process of its working, some new features have emerged in

the Indian judicial system, such as, Public Interest Litigation and Judicial Activism. We are going to discuss all these in the following heads:

10.3 JUDICIAL REVIEW

10.3.1 Meaning

The Constitution of India has provided for a special power to the Supreme Court and the High Courts. According to this power, the courts can examine whether a law passed by the legislature and an action taken by the executive are in consonance to the provisions of the Constitution or not. If the courts find that they are against the provisions of the Constitution or violate the Constitution, then they declare them as unconstitutional or invalid. This power has made the Supreme Court and the High Courts the guardian of the Indian Constitution.

10.3.2 Judicial Review in India

This power of the judiciary has helped to impose a certain amount of responsibility upon the legislature and the executive. The legislature while formulating laws must always keep it in mind that the laws do not go against the Constitution. Likewise, the executive should also take actions as per the provisions of the Constitution.

The power of judicial review of the Indian judiciary is limited. The Supreme Court and the High Courts can exercise this power only on two grounds. They are – i) whether the law or the executive action which has come under scrutiny falls within the competence of the authority that has framed it and ii) whether it is consistent with Part III of the Constitution which deals with the Fundamental Rights of the citizens.

The Indian judiciary does not have unlimited power of judicial review. It has to exercise its power by following the principle of "procedure established by law". Article 21 of the Constitution mentions

that “no person shall be deprived of his life and personal liberty except according to procedure established by law”. The term “law”, which is mentioned here, does not refer to natural law rather it refers to “state-made law”. This means that the courts while scrutinizing the laws can only question the procedure and if the procedure is not followed, only then the court can declare any law made by the legislature as unconstitutional. At the same time, the court can declare any law as unconstitutional when it finds violation of the provisions of the Constitution. In spite of the limitations, the Supreme Court and the High Courts have been exercising the power of judicial review successfully and have been working as the guardian of the Constitution and the protector of the Fundamental Rights of the citizens.

10.4 JUDICIAL ACTIVISM

10.4.1 Meaning

Judicial activism has emerged to be an important feature of the Indian judicial system in recent years. The Supreme Court and the High Courts have been given the responsibility to protect the Constitution and the Fundamental Rights of the citizens in India. To perform this responsibility, they are empowered with the power of judicial review and in that capacity they have become very active for protecting public interest which is described as judicial activism.

10.4.2 Judicial Activism in India

The courts have started to intervene in and question the activities of the executive and the legislature while reminding them of their duties and responsibility towards the public.

The Supreme Court and the High Courts have been delivering judgements, decisions and directives against the apathetic and irresponsive attitude of the executive and the legislature on the matters

of common public interest. They have also become active against corrupt practices of the public servants and others.

While showing its activism, the Supreme Court has issued directions to control pollution, to check the evil of child prostitution, to revive a sick company to protect the livelihood of 10,000 employees, to look into the dangers in building a dam, to protect the Taj Mahal from environmental pollution and many others.

The process of judicial activism can be said to have actually started in India in 1985. The then Chief Justice of India, Justice P.N. Bhagavati accepted a letter written to him on a post card by an aggrieved citizen for consideration of judicial decision. Thus, the process of judicial activism began in India. It became more and more pronounced in the 1990s.

It has been cautioned that while becoming active the judiciary should not cross its limits set by the Constitution. It must observe restraint in its activities. Because judicial dictatorship is even more dangerous than that of executive dictatorship. It must remember its jurisdiction and respect the authority of the executive and the legislature.



LET US KNOW

A writ is a formal order given by a court. The writ of Habeas Corpus is issued to protect a person from wrongful detention. The writ of Mandamus is issued to give an order to some subordinate authority to perform an act which falls within its jurisdiction. The writ of Prohibition is issued by a superior court to a subordinate court to prevent it from dealing with a matter over which it has no jurisdiction. The writ, which is issued in order to prevent a person from acting in a public office to which he is not entitled, is known as Quo-warranto. Another writ, which is issued by a superior court to a subordinate court for submitting the record of a case for its proper consideration, is called Certiorari.

10.5 PUBLIC INTEREST LITIGATION

Public Interest Litigation (PIL) has emerged to be a new device in the Indian judicial system for providing speedy and affordable judicial service to the people. The PIL which is also described as the "New Legal Horizon" has been designed to achieve four main objectives, such as, to make judicial system active, efficient, less costly and simple.

This device emerged when the seven-judge Constitution bench of the Supreme Court in its historic judgement in the Judges Transfer case held that any member of the public even if not directly involved but having "sufficient interest" can approach the High Court under Article 226 or in case of violation of the Fundamental Rights, the Supreme Court can be approached under Article 32. The Courts can be approached for redress of grievances of the persons who cannot move the courts because of "poverty, helplessness or disability or socially or economically disadvantaged positions".

PIL is a system which avoids the formal approach to the judicial system. It can be initiated without making formal petition in a prescribed format and manner as is required in a normal case. The persons who seek justice may write even a postcard to the court and the court may consider the case for action if found to be fit. This is called the epistolary jurisdiction of the higher courts.

PIL can be misused for vested interest by some unscrupulous persons. The critics are also of the view that as there are no proper guidelines for admission and disposal of PIL cases, so the courts have the chances for going beyond their limits. Then, the lack of follow up actions may make the PIL system ineffective even after the courts provide relief to the aggrieved. At the same time, public consciousness is also not so strong in India for proper working of such a progressive device.



CHECK YOUR PROGRESS

Q.1: What do you understand by Judicial Review? Discuss the process of Judicial Review in India.

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Q.2: What is Judicial Activism?

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Q.3: What is Public Interest Litigation?

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LET US KNOW

Lok Adalats is an important device provided in the Indian judicial system for speedy and efficient settlement of disputes. They have been organized outside the formal judicial proceedings. Lok Adalats consists of a judicial officer and other members who are usually nominated from among social workers, members of women organizations, retired civil servants, doctors, teachers, etc. The judicial officer and the members of the Lok Adalats while deciding cases always try to find a settlement mutually arrived at by the disputing parties.



10.6 LET US SUM UP

- India has established an integrated judicial system. At the top of this system stands the Supreme Court, then come the High Courts and after that other Lower Courts. In the process of its working, some new features have emerged in the Indian judicial system, such as, Public Interest Litigation and Judicial Activism.

- The Supreme Court and the High Courts have been exercising the power of judicial review successfully and have been working as the guardian of the Constitution and the protector of the Fundamental Rights of the citizens.
- The court can declare any law as unconstitutional when it finds violation of the provisions of the Constitution.
- Judicial activism has emerged to be an important feature of the Indian judicial system in recent years.
- The process of judicial activism can be said to have actually started in India in 1985. It became more and more pronounced in the 1990s.
- It has been cautioned that while becoming active, the judiciary should not cross its limits set by the Constitution. It must observe restraint in its activities.
- Public Interest Litigation (PIL) has emerged to be a new device in the Indian judicial system for providing speedy and affordable judicial service to the people.
- PIL is a system which avoids the formal approach to the judicial system. It can be initiated without making formal petition in a prescribed format and manner as is required in a normal case.
- PIL can be misused for vested interest by some unscrupulous persons.



10.7 FURTHER READING

1) Chander, Prakash.(2000). *Indian Government and Politics*. New Delhi : Cosmos Bookhive Pvt. Ltd.

2) Ghai, K.K.(2007). *Indian Government and Politics*.New Delhi: Kalyani Publishers.

3) Kapur, Anup Chand and Misra, K.K. (2006). *Select Constitutions.*New Delhi : S. Chand and Company.

4) Pylee, M,V. (2006). *Constitutional Government in India.* New Delhi:S. Chand and Company.

10.8 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Judicial Review is a special power given to the Supreme Court and the High Courts by the Constitution of India. According to this power, the courts can examine whether a law passed by the legislature or an action taken by the executive is in consonance to the provisions of the Constitution or not. If the courts find that these are against the provisions of the Constitution or they violate the Constitution, then they declare them as unconstitutional or invalid. This power has made the Supreme Court and the High Courts the guardian of the Indian Constitution.

This power of the judiciary has helped to impose certain amount of responsibility upon the legislature and the executive. The legislature while formulating laws must always keep it in mind that the laws do not go against the Constitution. Likewise the executive should also take its actions as per the provisions of the Constitution.

The power of judicial review of the Indian judiciary is limited. The Supreme Court and the High Courts can exercise this power only on two grounds. They are – i) whether the law or the executive action which has come under scrutiny falls within the competence of the authority that has framed it and ii) whether it is consistent with Part III of the Constitution which deals with the Fundamental Rights of the citizens.

The Indian judiciary does not have unlimited power of judicial review. It has to exercise its power by following the principle of "procedure established by law". Article 21 of the Constitution mentions that "no person shall be deprived of his life and personal liberty except according to procedure established by law". The term "law", which is mentioned here, does not refer to natural law rather it refers to "state-made law". This means that the courts while scrutinizing the laws can only question the procedure and if the procedure is not followed, only then the court can declare any law made by the legislature as

unconstitutional. At the same time, the court can declare any law as unconstitutional when it finds violation of the provisions of the Constitution. In spite of the limitations, the Supreme Court and the High Courts have been exercising the power of judicial review successfully and have been working as the guardian of the Constitution and the protector of the Fundamental Rights of the citizens.

Ans to Q No 2: Judicial activism has emerged to be an important feature of the Indian judicial system in recent years. The Supreme Court and the High Courts have been given the responsibility to protect the Constitution and the Fundamental Rights of the citizens in India. To perform this responsibility, they are empowered with the power of judicial review and in that capacity they have become very active for protecting public interest which is described as judicial activism. The courts have started to intervene in and question the activities of the executive and the legislature while reminding them of their duties and responsibilities towards the public.

Ans to Q No 3: Public Interest Litigation has emerged to be a new device in the Indian judicial system for providing speedy and affordable judicial service to the people. The PIL which is also described as the "New Legal Horizon" has been designed to achieve four main objectives, such as, to make judicial system active, efficient, less costly and simple.

This device emerged when the seven-judge Constitution bench of the Supreme Court in its historic judgement in the Judges Transfer case held that any member of the public even if not directly involved but having "sufficient interest" can approach the High Court under Article 226 or in case of violation of the Fundamental Rights the Supreme Court can be approached under Article 32. The Courts can be approached for redress of grievances of the persons who cannot move to courts because of "poverty, helplessness or disability or socially or economically disadvantaged positions".



10.9 MODEL QUESTIONS

A) Very Short Questions

Q 1: "The Supreme Court can declare any law as unconstitutional when it finds violation of the provisions of the Constitution." (True/False)

Q 2: What is Public Interest Litigation?

B) Short Questions (Answer each question in about 150 words)

Q.1: What are the qualifications to be a judge of the Supreme Court?

Q. 2: How the judges of the Supreme Court and the High Courts can be removed from office?

Q. 3: What are the Subordinate Courts in India?

C) Long Questions (Answer each question in about 300-500 words)

Q. 1: Discuss the process of judicial activism in India?

Q. 2: Critically examine the working of Public Interest Litigation system in India?

Q. 3: Describe the system of Judicial Review in Indian political system.

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